

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-102-S - ORDER NO. 2019-856
DECEMBER 13, 2019

IN RE: Application of Kiawah River Utility) ORDER APPROVING
Company for Approval of Sewer Rates,) AND ADOPTING
Terms, and Conditions) STIPULATION

The above-captioned matter is before the Public Service Commission of South Carolina (“Commission”) on the Application for Establishment of Service Area and Establishment of Sewer Rates and Charges filed by Kiawah River Utility Company (“Company” or “KRUC”) on June 21, 2019. KRUC and the South Carolina Office of Regulatory Staff (“ORS”) (collectively the “Parties”, or sometimes individually, “Party”) filed a proposed Stipulation on October 22, 2019, addressing all issues in the case. There were no contested issues, intervenors, or opposition to the Application. Based on careful review and consideration of all materials filed in this Docket and of the Stipulation, the Commission adopts the Stipulation (Order Exhibit 1) as set forth in detail below.

This matter was initiated on March 27, 2018, when KRUC filed a letter of intent with the Commission. On June 21, 2019, KRUC filed an Application for establishment of service area and establishment of sewer rates and charges (“Application”) with the Commission pursuant to S.C. Code Ann. § 58-5-240 and S.C. Code Ann. Regs. 103.512.4.B. On July 12, 2019, KRUC filed a Substitute Exhibit 11 to the Application with the Company’s fully executed performance bond in the amount of \$350,000. On

November 19, 2019, KRUC filed a Bond Rider to clarify the type of surety providing the bond.

By letter dated July 12, 2019, the Commission's Clerk's Office instructed KRUC to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by KRUC's Application. The Notice of Filing described the nature of the Application and advised all interested persons of the scheduled proceedings and how to participate in the proceedings as a party of record. The Commission also instructed KRUC to notify directly each customer affected by the Application by mailing a copy of the Notice of Filing. On August 9, 2019, KRUC filed an Affidavit of Publication certifying that the Notice of Filing had been duly published. KRUC filed an affidavit on August 12, 2019, certifying that it had complied with the instructions of the Commission's Clerk's Office and mailed a copy of the Notice of Filing to all current third-party owners of properties in Kiawah River that are or will be served by KRUC and to the Administrator for Charleston County.

No petitions to intervene were filed in this Docket, and ORS became a party per statute. KRUC filed the Direct Testimony of four witnesses-- Lyndell Cummins, Kevin O'Neill, John Guastella, and Gary White-- on September 10, 2019.

Lyndell Cummins is a licensed professional engineer in South Carolina with Thomas & Hutton and the lead civil engineer for Kiawah River. Mr. Cummins was involved in the design drawings and specifications for the wastewater treatment plant for Kiawah River and reviewed the designs with respect to good engineering practices and regulatory requirements prior to certification.

John Guastella testified to his involvement in preparing KRUC's rate study and to the record keeping, accounting, billing, customer service, financial and regulatory services that his company, Guastella Associates, LLC, has contracted with KRUC to provide. Gary White, Vice President of Guastella Associates, also testified to his role in developing KRUC's rate study.

Kevin O'Neill helped negotiate the development agreement with Charleston County that provides the zoning framework for the large planned community of Kiawah River. Mr. O'Neill described the Kiawah River development and provided an overview of the steps taken to ensure that KRUC will be able to operate and how it will be run. These steps included entering three agreements addressed by Mr. O'Neill.

First, KRUC entered into an Operator Agreement with M. Agin & Associates, a licensed wastewater operator. Under the Operator Agreement, M. Agin & Associates is responsible for the operation and maintenance of the wastewater system and ensuring compliance with all applicable regulations. Second, KRUC executed a Management Agreement with Kiawah River Utility Holdings, LLC ("KRUH"), KRUC's parent, and Guastella Associates, LLC for the latter to handle the financial and managerial aspects of the utility that are not directly involved with the physical operation of the wastewater facilities. Finally, KRUC entered the Amended Memorandum of Understanding ("MOU"), executed along with KRUH and Kiawah River Investments, LLC ("KRI"), KRUH's parent and the developer of Kiawah River. KRI, as the developer, depends upon KRUC to install, operate, and manage the wastewater facilities. Therefore, through the MOU, KRI agrees to advance all necessary funds to KRUC, through KRUH, to cover KRUC's operating deficits

until KRUC is financially viable. KRUC filed an Application for the approval of the Operator Agreement, Management Agreement, and MOU, pursuant to S.C Code Ann. Regs. 103-541 on September 19, 2019.

ORS filed the Direct Testimony and Exhibit of Anthony Sandonato on September 24, 2019. Mr. Sandonato explained ORS's findings relative to the review of KRUC's Application. He addressed ORS's plant inspection, KRUC's compliance with S.C. Code Ann. Regs. 103.512.4.B, and the three agreements –for operation and maintenance services, management services, and the MOU—that KRUC executed.

Negotiations between the Parties in this proceeding resulted in a proposed Stipulation filed with the Commission on October 22, 2019.¹ The Parties determined that their interests, as well as the public interest, are best served by the terms and conditions in the Stipulation. By signing the Stipulation, the Parties' acknowledged their consent to its terms and asserted the terms to be fair and reasonable.

On October 24, 2019, counsel for KRUC filed a request to waive the hearing in this Docket and to submit a joint proposed order.² On October 31, 2019, KRUC filed affidavits verifying the testimony of witnesses Cummins, Guastella, and White. On November 4, 2019, KRUC filed a Revised Schedule for Sewer Service, which clarified certain portions of the original Schedule for Sewer Service filed with the Application. On November 4, 2019, ORS also filed an affidavit verifying the testimony of witness Sandonato, and KRUC filed an affidavit verifying the testimony of witness O'Neill.

¹ Exhibit 1 to the Stipulation, the Schedule for Sewer Service, was filed on October 23, 2019. Exhibit 1 to the Stipulation was supplanted by the Revised Schedule for Sewer Service filed on November 4, 2019.

² KRUC filed an Amended Request on October 25, 2019, correcting a clerical error in the initial request.

On November 6, 2019, the Commission granted KRUC's request to waive the hearing with Order No. 2019-771, noting that the parties reached a stipulation in this matter, and that there were no contested issues, intervenors, or opposition to the Application.

The sewer rates and charges, provided below, are specified in the Revised Schedule for Sewer Service filed on November 4, 2019, attached to and incorporated as a part of this Order as contained in Order Exhibit 1. KRUC's proposed monthly rate is \$85 per month per unit paid by customers in advance.

Table 1: Monthly Flat Rates and Connection Fees

General Customer Service Group	Monthly Rate per Unit	Monthly Rate per Sq. Ftg.	Connection Fee per Unit	Connection Fee per Sq. Ftg.
Residential	\$85.00		\$4,500.00	
Workforce Housing	\$85.00		\$4,500.00	
Lodge Units	\$56.70		\$3,000.00	
Hotel Units	\$56.70		\$3,000.00	
Commercial		\$0.0567		\$3.00
Recreation Facilities		\$0.0567		\$3.00

Accordingly, we make the following findings of fact:

1. We find that an establishment of service area and sewer rates and charges is necessary, as the area in which KRUC seeks to provide service is not currently served by any other wastewater utility company. We find that the rates and charges agreed to by the Parties are fair and reasonable and will allow KRUC to provide its customers with adequate wastewater service.

2. We find the terms and conditions set forth in the Stipulation are fair and reasonable to the Parties, as well as to the KRUC customers that will be affected by the rates and fees approved by this Order.

3. Based on careful review and consideration of the Stipulation and the materials filed in this Docket, the Commission concludes as a matter of law that (i) approval of the Stipulation is in the public interest and constitutes a reasonable resolution of this proceeding; (ii) the residential and commercial sewer rates and charges agreed to by the Parties and as set forth in Order Exhibit 1 attached hereto are reasonable and fair and should be put into effect after the notice required herein.

4. The Operator Agreement, the Management Agreement, and the Amended Memorandum of Understanding are all reasonably calculated to assure the provision of continuously adequate service and service in a diligent and timely manner with full regulatory compliance and, accordingly, are approved.

IT IS THEREFORE ORDERED THAT:

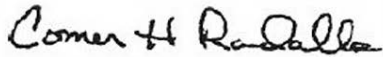
1. The Stipulation and the Revised Schedule for Sewer Service are attached hereto as Order Exhibit 1, accepted into the record without objection, and incorporated into

and made part of this Order by reference. Further, we find the Stipulation is in the public interest and constitutes a reasonable resolution of this proceeding and that the proposed rates, fees, and charges are both fair and reasonable and will allow KRUC to provide its customers with adequate wastewater services. We further find that the additional terms and conditions set forth in the Stipulation are reasonable and fair.


2. KRUC must comply with all obligations provided for under the Stipulation.
3. The Company is to provide thirty (30) days' advance notice of the rates to customers of its water and wastewater services prior to the rates and schedules being put into effect for service rendered. The schedules shall be deemed to be filed with the Commission pursuant to S.C. Code Ann. § 58-5-240.
4. The Company shall continue to maintain the current performance bond in the amount of \$350,000 for wastewater operations pursuant to S.C. Code Ann. § 58-5-720.
5. The Company's books and records shall be maintained according to the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts. The Company is directed to make any necessary adjustments to its accounting system to conform to the NARUC Uniform System of Accounts.
6. The Operator Agreement, the Management Agreement, and the Amended Memorandum of Understanding are approved.

7. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Comer H. "Randy" Randall, Chairman

ATTEST:


Jocelyn Boyd, Chief Clerk/Executive Director

WHEREAS; KRI, KRUH, and KRUC entered into a Memorandum of Understanding that was replaced with an Amended Memorandum of Understanding (“MOU”) to formalize the commitment of KRI to fund all utility operating deficits until there is a sufficient level of operating revenues or KRUC can attract capital;

WHEREAS, the Kiawah River Development is a proposed mixed-use community that would, once fully developed, include up to 1,285 homes; up to 450 guest rooms in hotels, inns, and/or villas; and 80,000 square feet of retail and/or office use;

WHEREAS, buildout of the Kiawah River Development began in 2019 and the utility company operations are expected to be completed in four (4) phases over the next twenty (20) years;

WHEREAS, upon completion of the first phase of the buildout, KRUC will operate as a NARUC Class C wastewater utility;

WHEREAS, KRUC has contracted with M.J. Agin & Associates (the “Operator Agreement”) to perform maintenance, repairs, and environmental compliance duties;

WHEREAS, KRUC has contracted with Guastella Associates, LLC (the “Management Agreement”) to manage KRUC’s record keeping, accounting, billing, customer service, financial, and regulatory matters;

WHEREAS, ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (Supp. 2018);

WHEREAS, ORS conducted an examination of the financial records of the Company relative to the matters raised in the Application and has conducted a site visit;

WHEREAS, the Company filed a Petition with the Commission on September 19, 2019, for the Approval of Contracts with the Utility Operator, the Utility Manager, and Parent/Developer pursuant to 26 S.C. Code Regs. R. 103-541;

WHEREAS, the Company provided ORS copies of the contracts for which it is seeking approval before filing the Application for Approval and ORS has reviewed the contracts and does not object to the contracts;

WHEREAS, the Parties engaged in discussions to determine if a stipulation would be in their best interests and, in the case of ORS, in the public interest; and,

WHEREAS, following those discussions, the Parties determined that their interests, and ORS determined that the public interest, would be best served by stipulating to an agreement regarding issues pending in the above-captioned case under the terms and conditions set forth herein;

**A. STIPULATION OF AGREEMENT, TESTIMONY AND WAIVER OF CROSS-
EXAMINATION**

1. The Parties agree to stipulate into the record before the Commission the pre-filed testimony and exhibits (collectively, the “Stipulated Testimony”) of the following witnesses without objection, change, amendment, or cross-examination with the exception of changes comparable to those that would be presented via an errata sheet or through a witness noting a correction consistent with this Stipulation. The Parties also reserve the right to engage in redirect examination of witnesses as necessary to respond to issues raised by the examination of their witnesses, if any, by the Commission or by any late-filed testimony.

KRUC witnesses:

1. Kevin O’Neill
2. John Guastella

3. Lyndell Cummins
4. Gary White

ORS witness:

1. Anthony Sandonato

2. The Parties agree to offer no other evidence in the proceeding other than the stipulated testimony and exhibits and this Stipulation unless the additional evidence is to support the Stipulation, consists of changes comparable to that which would be presented via an errata sheet or through a witness noting a correction or clarification, consists of a witness adopting the testimony of another if permitted by the Commission, or is responsive to issues raised by examination of the Parties' witnesses by Commissioners or by late-filed testimony. The Parties agree that nothing herein will preclude each party from advancing its respective positions in the event that the Commission does not approve the Stipulation.

3. The Parties hereby stipulate to the following terms, which if adopted by the Commission in its Order on the merits of this proceeding, will result in rates and terms and conditions of sewer service which are adequate, just, reasonable, nondiscriminatory, and supported by the evidence of record of this proceeding, and further result in the Commission's approval of the Operator Agreement, the Management Agreement, and the MOU.

B. REMAINING STIPULATION TERMS AND CONDITIONS

4. The Parties stipulate and agree KRUC must keep and maintain the performance bond in the amount of \$350,000 for sewer service filed with the Commission on July 12, 2019;

5. The Parties stipulate and agree KRUC's proposed monthly rate of \$85 per month per unit paid by customers in advance is just and reasonable;

6. The Parties stipulate and agree the terms set forth in KRUC's schedule for sewer service (Exhibit 6A to the Application, copy attached as Exhibit 1 hereto) are just and reasonable;

7. The Parties stipulate and agree to the sufficiency of the sample billing invoice attached as Exhibit 14 to the Application;

8. The Parties stipulate and agree KRI or KRUC will revise the disclosure under the Interstate Land Sales Full Disclosure Act furnished to all prospective purchasers of property within the Kiawah River Development to set forth the initial rates of service and to further state KRUC anticipates seeking increases in the rates in the future that would have to be approved by the South Carolina Public Service Commission;

9. The Parties stipulate and agree that ORS does not object to the Company's request for Commission approval of the Operator Agreement, the First Amendment to the Operator Agreement, the Management Agreement, and the MOU;

10. The Parties stipulate and agree KRUC is currently operating under a temporary permit that allows the Company to store the wastewater from the system in the aerated lagoon. Once the system wastewater flow reaches 4,000 gallons per day the Company will obtain final approval to operate from DHEC and commence the operation of the plant. KRUC will notify the Commission and ORS once the Company obtains final approval from DHEC and begins the operation of its wastewater treatment plant and will provide a copy of DHEC's final approval for operation to ORS and the Commission.

11. The Parties agree that this Stipulation is reasonable, is in the public interest, and is in accordance with law and regulatory policy. This Stipulation in no way constitutes a waiver or acceptance of the position of either of the Parties in any future proceeding. This Stipulation does not establish any precedent with respect to the issues resolved herein and in no way precludes any Party herein from advocating an alternative position in any future proceeding.

12. The Parties agree to cooperate in good faith with one another in recommending and advocating to the Commission that this Stipulation be accepted and approved by the Commission in its entirety as a fair and reasonable resolution of certain issues currently pending in the above-captioned proceeding and detailed here-in, and to take no action inconsistent with its adoption by the Commission. The Parties agree to use their best efforts to defend and support any Commission order issued approving this Stipulation and the terms and conditions contained herein.

13. The Parties agree that signing this Stipulation (a) will not constrain, inhibit, impair, or prejudice their arguments or positions held in future or collateral proceedings; (b) will not constitute a precedent or evidence of acceptable practice in future proceedings; and (c) will not limit the relief, rates, recovery, or rates of return that any Party may seek or advocate in any future proceeding. If the Commission declines to approve this Stipulation in its entirety, then any Party may withdraw from the Stipulation without penalty or obligation.

14. This Stipulation shall be interpreted according to South Carolina law.

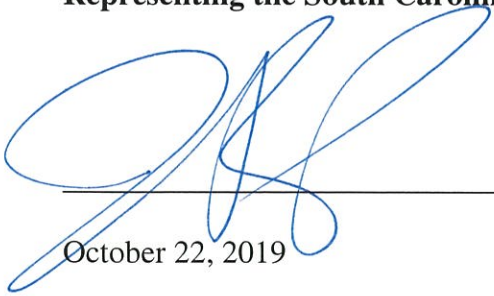
15. The Parties represent that the terms of this Stipulation are based upon full and accurate information known as of the date this Stipulation is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Stipulation is based, either Party may withdraw from the Stipulation with written notice to the other Party.

16. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation, by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as

original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Stipulation.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

Representing the South Carolina Office of Regulatory Staff



October 22, 2019

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Jenny R. Pittman, Esquire
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Representing Kiawah River Utility Company

G. Trenholm Walker

P.P. 

October 22, 2019

G. Trenholm Walker, Esquire
Thomas P. Gressette Jr., Esquire
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Solely with respect to Paragraph 8 of the Stipulation:

Representing Kiawah River Investment, LLC

G. Trenholm Walker

P.P. 

October 22, 2019

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KIAWAH RIVER UTILITY COMPANY

SCHEDULE

FOR

SEWER SERVICE

APPLICABLE

IN

“KIAWAH RIVER”

CHARLESTON COUNTY, SOUTH CAROLINA

Date of Issue: June 1, 2019
Revised: November 4, 2019

Effective Date: July 1, 2019

Issued By: John Darby, President

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GENERAL INFORMATION

1. Territory

“Kiawah River” Development – Mixed Use Residential/Resort Community

CHARLESTON COUNTY, SOUTH CAROLINA

2. Application for Sewer Service

Application for service will be required in accordance to South Carolina Code of Regulations 103-534.

3. Deposits

Deposits will be required in accordance to South Carolina Code of Regulations 103-531, 103-531.1, 103-531.2, 103-531.3, 103-531.4, 103-531.5, 103-531.6, 103-531.7.

4. General Rules

- A. Customers must provide 10 days' written or oral notice prior to the date on which termination of service is requested or prior to a change of occupancy, until which date the customer will be responsible for payment of service.
- B. The Company shall not be liable for any damage or expense resulting from leaks, stoppages or defective plumbing or from any other cause occurring to any premises, or within any house or buildings; and it is expressly stipulated by and between the Company and the Customer that no claims shall be made against the said Company on account of the breaking, stoppage or any damage or expense to any service lines on said property, when the cause thereof is found to be in that part of the service line lying on said property.
- C. The Company will not be liable for any claim or damage arising from a deficiency of service or discontinuance of service, the breaking of machinery or other facilities, or for any other cause. The Company reserves the right to rescind service whenever the public welfare may require it.
- D. The company may shut off sewer in its mains to make repairs and extensions. Where possible, proper advance notice will be made to customers affected.
- E. All leaks in consumer's service line and fixtures must be repaired promptly and by and at the expense of the consumer. After failure to repair leaks within five (5) days after notice to do so, the Company reserves the right to shut off consumer's service. The Company will not restore the service until all needed repairs have been made and until all charges incurred by the Company in shutting off and restoring the service have been paid.
- F. There must be a separate service lateral for each premises or unit.
- G. Installation of service pipes and mains will not normally be made during prohibitive weather conditions.

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GENERAL INFORMATION

- H. The customer is responsible for service pipes and plumbing within the property line. Any plumbing work done on the customer's service pipe is subject to approval by the company. No underground work shall be covered up until it has been inspected and approved by the company.
- I. All mains, services (up to the property line) and other sewer system facilities will be maintained and replaced by the company.
- J. The Company Sewerage System is meant to provide sanitary collection and final disposal of domestic sewage and certain types wastes amenable to disposal in the Company's facilities. The Company reserves the right of approval of all wastes to be discharged to its system in specific conditions contained in Permits issued to the Company by environmental regulatory authorities.
- K. Where an applicant is seeking service at an elevation or gradient which could not otherwise be adequately serviced by existing plant, the company will require that the applicant bear the additional cost of providing such extraordinary service, or in the alternative, require the applicant to purchase, install and maintain the necessary special equipment, such as a lift pumping system, needed to serve the premises.
- L. Customers must permit company representatives to enter their premises on reasonable request for purposes relating to the operation and maintenance of the company's system, including inspection of the customer's and the company's facilities, and terminating and restoring service.
- M. No person shall maliciously, willfully or negligently damage, destroy, uncover, deface, block access to or tamper with any pipe, valve, structure, appurtenance or equipment which is a part of the sewer works system.
- N. The Company reserves the right to change or amend, from time to time, these Rules, Regulations and Rates, in accordance with law.

5. Extension of Mains

Mains will be extended at the discretion of the Company.

6. Discontinuance of Service - Non-Payment

Service may be discontinued in accordance with South Carolina Code of Regulations 103-535, 103-535.1, 103-536.

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7. Discontinuance of Service - Other

- A. Service rendered under any application, contract or agreement may be discontinued by the company after reasonable notice for any of the following reasons:
- (1) For non-authorized use of the sewer system.
 - (2) For failure to protect and maintain the service pipe or fixtures on the property of the customer in a condition satisfactory to the company.
 - (3) For tampering with any connections, service pipe, curb cock, seal or any other appliance of the company controlling or regulating the customer's sewer service facilities.
 - (4) For failure to provide the company's employees reasonable access to the premises supplied, or for obstructing the way of ingress to any appliances controlling or regulating the customer's sewer service.
 - (5) In case of vacancy of the premises.
 - (6) For violation of any rule or regulation of the company, provided such violation affects the reliability or integrity of the sewer system.
- B. Written notice of discontinuance of service shall contain the information as to the reason for discontinuance and will be given except in those instances where a public health hazard exists.
- C. The company may, at any time, temporarily discontinue sewer service in case of accident, or for the purpose of making connections, alterations, repairs, changes, etc.
- D. Except as stated in the preceding paragraph, or in the case of a violation that threatens the integrity of the sewer system, the company shall not discontinue service to any customer on a Friday, Saturday, Sunday, Public Holiday or on a day when the company is not open for business. Public Holiday shall refer to those holidays defined in S.C. Ann. §53-5-10

8. Restoration of Service

Restoration of service will be provided in accordance to South Carolina Code of Regulations 103-532.4.

SERVICE CLASSIFICATION NO. 1

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Date Effective: July 1, 2019

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Applicable to use of Service for:

Residential and General Service use.

Character of Service:

Continuous.

Monthly Flat Rates and Connection Fees:

<u>General Service Customer Group</u>	<u>Monthly Rate per Unit</u>	<u>Monthly Rate per Sq. Ftg.</u>	<u>Connection Fee per Unit</u>	<u>Connection Fee per Sq. Ftg.</u>
Residential	\$ 85.00		\$4,500.00	
Workforce Housing	\$ 85.00		\$4,500.00	
Lodge Units	\$ 56.70		\$3,000.00	
Hotel Units	\$ 56.70		\$3,000.00	
Commercial		\$0.0567		\$3.00
Recreation Facilities		\$0.0567		\$3.00

Terms of Payment:

The above rate flat charges shall be rendered monthly in advance and are due and payable upon receipt. Bills not paid within 30 days of mailing are delinquent and the late payment charge becomes applicable. Service may be discontinued after proper notice, as identified herein.

The above connection fee is a one-time charge payable upon the initial connection to the Utility system.

Late Payment Charge:

A late payment charge to be computed at the rate of 1 1/2 percent per month, compounded monthly, may be applied to all balances left unpaid 30 days following mailing of the bill.

Termination:

Service is terminable at the customer's request by written or oral notice to the company. The Utility shall have a reasonable period of time after the receipt of notice to terminate service.

Service may be discontinued by the Utility for non-payment. The Utility must give 30 days' notice by certified mail and at the expiration of the 30 days will provide a second notice advising the customer that service will be terminated after 10 days.

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Kiawah River Utility Company.

Original Leaf No. 7
Revised Leaf No. __
Superseding __ Revised Leaf No. __

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